IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 682 of 2000

Date of decision 12.10.2007

State of Himachal Pradesh **..Appellant**

Versus

Partap Singh **..Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] NO

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondent

Deepak Gupta, J. (Oral)

This appeal is directed against the judgment of the learned Chief Judicial Magistrate, Solan, in Criminal Case No. 119/2 of 1997, decided on 28.7.2000 acquitting the accused of having committed an offence punishable under Sections 323/325/506 IPC.

The prosecution case in brief is that complainant Devender Kumar Verma, lodged a report that accused Pratap Singh had started grazing his cattle in the Ghasni belonging to the complainant as well as in the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Ghasni belonging to the Military Engineering Service (MES). The complainant took exception to the accused grazing his cattle in the Ghasni belonging to the complainant and tried to remove the said cattle from his land. On this the accused got enraged, started pelting stones on the complainant and caused injuries to the complainant. As per the complainant the incident was witnessed by Dhani Ram and Mohan Lal who were on the spot and who saved the complainant from the clutches of the accused. On the basis of the complaint, FIR was lodged. The complainant was got medically examined and after completing the investigation the challan was put in court. After appearance the accused pleaded not guilty and claimed trial.

The complainant has supported his version while appearing in the witness box. However, both the eye witnesses, PW-3 Dhani Ram and PW-5 Mohan Lal have not at all supported the prosecution version. According to PW-3 Dhani Ram he heard the cries of Bachao-Bachao being raised by the wife of the complainant. On this he went to the spot and he found that complainant and accused were abusing each other. He specifically stated that the complainant's wife was also

present there. He also stated that both, the complainant and the accused, had suffered some injuries, but he did not know how these injuries had been caused. The witness was declared hostile and thereafter cross examined by the prosecution. Even after being cross examined, nothing substantial has been elicited in the cross examination. This witness has denied seeing the accused either hurling stones or giving any blows to the complainant.

PW-5, Mohan Lal, comes up with a totally different version. According to him PW-3 was not present on the spot. He also states that he reached the spot, after hearing the noise of a quarrel. He, however, did not witness any of the parties giving blows to each other. The wife of the complainant has not been examined, who, according to PW-3, was on the spot. The statements of these two witnesses are totally contradictory and do not support the case of the prosecution at all. There is no doubt that some fight did take place between the accused and the complainant. However, what is the genesis of this scuffle, has not been brought out by the prosecution and there is nothing on record to prove that accused gave beating to the complainant. The trial court has rightly

acquitted the accused. The judgment calls for no interference. The appeal is dismissed. The bail bonds of accused are discharged.

October 12, 2007(K) (Deepak Gupta), J.